

Message Text

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ACTION DLOS-07

INFO OCT-01 ARA-16 ISO-00 CG-00 CIAE-00 DODE-00 PM-07 H-03

INR-11 L-03 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03

SS-20 USIA-15 AID-20 CEQ-02 COA-02 COME-00 EB-11

EPA-04 IO-14 NSF-04 SCI-06 FEA-02 ACDA-19 AEC-11

AGR-20 DOTE-00 FMC-04 INT-08 JUSE-00 OMB-01 OIC-04

AF-10 EA-11 EUR-25 NEA-14 DRC-01 /292 W

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R 201855Z JUL 74

FM AMEMBASSY CARACAS

TO SECSTATE WASHDC 4864

S E C R E T SECTION 1 OF 2 CARACAS 6835

FROM US DEL LOS

EO 11652: GDS

TAGS: PLOS

SUBJ: AMB. STEVENSON AND MR. MOORE'S MEETING WITH

AMB. ABAROA AND AMB. LACLETA OF SPAIN, JULY 16

1. AMBASSADOR STEVENSON AND PROFESSOR MOORE MET WITH AMBASSADOR ABAROA AND AMB. LACLETA, THE CHAIRMAN AND DEPUTY CHAIRMAN OF THE SPANISH DELEGATION. IN THE COURSE OF THE MEETING THE FOLLOWING POINTS OF INTEREST EMERGED.

2. THE SPANISH DELEGATION HAS RIGID INSTRUCTIONS TO MAINTAIN THEIR POSITION OF TRANSIT THROUGH INTERNATIONAL STRAITS, I.E., TO SUPPORT INNOCENT PASSAGE AND PROHIBIT SUBMERGED TRANSIT AND MILITARY OVERFLIGHT AND REQUIRE NOTIFICATION OR AUTHORIZATION FOR SURFACE TRANSITS BY WARSHIPS. THE SPANISH DELEGATION INDICATED THAT THE SPANISH GOVERNMENT'S PARTICULAR CONCERN CONTINUES TO BE WITH THE RISK OF POLLUTION AND MARITIME ACCIDENTS IN THE STRAIT OF GIBRALTAR

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AND WITH THE RISK OF MILITARY AIRCRAFT COLLIDING WITH

SPANISH COMMERCIAL FLIGHTS WICH FLY SOUTH OVER THE STRAIT. THEY INDICATED THAT PERHAPS MORE IMPORTANT IS SPANISH INSISTENCE OF SOVEREIGNTY IN THEIR TERRITORIAL WATERS. THE USUAL SPANISH LINE THAT THE U.S. WOULD BE BETTER PROTECTED THROUGH A BILATERAL ARRANGEMENT WITH A FRIENDLY ALLY SUCH AS SPAIN THAN THROUGH GENERAL ARRANGEMENT WHICH WOULD ALSO BENEFIT THE SOVIET UNION WAS TROTTED OUT. AFTER STEVENSON AND MOORE EXPLAINED THAT THE U.S. DELEGATION'S INSTRUCTIONS WERE EQUALLY STRICT AND THE CRITICAL IMPORTANCE TO U.S. SECURITY OBJECTIVES OF UNIMPEDED TRANSIT OF STRAITS, INCLUDING OVERFLIGHT, AND OUR WILLINGNESS TO MEET LEGITIMATE STRAIT STATE POLLUTION AND NAVIGATIONAL SAFETY CONCERNS THROUGH EFFECTIVE INTERNATIONAL RULES AND LIBILITY, BOTH ABAROA AND LACLETA, PARTICULARLY LACLETA, INDICATED THEIR PERSONAL VIEW THAT SPAIN'S DIFFICULTIES IN ACCEPTING AN UNIMPEDED TRANSIT REGIME WERE KEYED TO THE INTENSE SPANISH DOMESTIC CONCERN WITH CONTINUING U.K. OCCUPATION OF THE ROCK OF GIBRALTAR.

3. WHILE U.S. DELEGATION IS, OF COURSE, AWARE OF USG PAST EFFORTS TO INFLUENCE THE SPANISH GOVERNMENT DIRECTLY, INCLUDING A PRESIDENTIAL LETTER, WE FEEL THAT AT THIS TIME WE ARE UNABLE TO INFLUENCE SIGNIFICANTLY THE SPANISH DELEGATION HERE DESPITE CONSIDERABLY LESS RIGIDITY OF THEIR PART THAN THEIR PREDECESSORS UNLESS THE CRITICAL IMPORTANCE TO U.S. NATIONAL SECURITY OBJECTIVES AND INDIRECTLY TO SAPIN OF OUR STRAITS PROPOSALS IS BROUGHT HOME AGAIN AT THE HIGHEST LEVEL TO THE SPANISH GOVERNMENT.

4. WE OF COURSE WOULD ALSO APPRECIATE ANY INFORMATION REGARDING THE POSSIBILITY OF ANY CHANGE IN THE SITUATION RELATING TO THE ROCK OF GIBRALTAR, ALTHOUGH WE APPRECIATE THAT THE USG IS IN NO POSITION TO MAKE SUGGESTIONS TO THE U.K. IN THIS REGARD.

5. DELEGATION RECOMMENDS HIGH-LEVEL DEMARCHE TO THE SPANISH GOV ON STRAITS ISSUE WHICH MAKES CLEAR IMPORTANCE OF ISSUE TO THE U.S. AND ITS SERIOUSNESS FOR U.S. SPANISH RELATIONS.

6. FYI: FOLLOWING IS EXCERPT RE TRANSIT THROUGH STRAITS FROM
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STATEMENT OF HEAD OF SPANISH DEL AMB. GONE, DELIVERED TO PLENARY SESSION OF THE CONFERENCE, JULY 14, 1974: QUOTE: 9. IN SUCH TRADITIONAL SPACE AS THE TERRITORIAL SEA INCLUDING THE STRAITS USED FOR INTERNATIONAL NAVIGATION, THE REGIME OF NAVIGATION HAS RAISED NO PROBLEMS IN THE PAST. FREEDOM OF NAVIGATION AND SECURITY OF THE COASTAL STATE DID FIND THEIR JUST BALANCE IN THE NOTION OF "INNOCENT PASSAGE" OF FOREIGN SHIPS THROUGH THE TERRITORIAL SEA INCLUDING

STRAITS.

THE SPANISH POSITION ON THIS MATTER, MR. PRESIDENT, IS WELL KNOWN. WE CONSIDER THAT THE TERRITORIAL SEA, SECURITY AREA OF THE COASTAL STATE, SHOULD HAVE A UNIFORM BREADTH, WHICH COULD BE FIXED AT TWELVE NAUTICAL MILES, IF A CONSENSUS ON THIS POINT IS REACHED. AT THE SAME TIME, AND BECAUSE WE RESPECT THE UN CHARTER PRINCIPLES OF PEACEFUL THAT SHIPS BELONGING TO ANY STATE, WHETHER COASTAL OR NOT, SHALL ENJOY THE RIGHT OF INNOCENT PASSAGE THROUGH THE TERRITORIAL SEA, INCLUDING THE STRAITS USED FOR INTERNATIONAL NAVIGATION.

IN ITS IMPORTANT DECLARATION ON THE ISSUES OF THE LAW OF THE SEA ADOPTED IN MAY 1973 (DOC. A/AC.138/89), THE OAU HAS MAINTAINED THAT THE AFRICAN STATES "ENDORSE THE REGIME OF INNOCENT PASSAGE IN PRINCIPLE BUT RECOGNIZE THE NEED FOR FURTHER PRECISION OF THE REGIME." IN ORDER TO REACH THIS OBJECTIVE, SPAIN TOGETHER WITH SEVEN OTHER COUNTRIES HAS COSPONSORED A DRAFT PROPOSAL ON THIS ISSUE (DOC. A/AC.138/SC.11/L.18), WHOSE MAIN IDEA IS TO ACHIEVE A MAXIMUM FREEDOM FOR PEACEFUL NAVIGATION COMPATIBLE WITH OBJECTIVE SECURITY REQUIREMENTS OF COASTAL STATES.

10. MR. PRESIDENT, IN VIEW OF THE IMPORTANCE OF INTERNATIONAL NAVIGATION THROUGH THE STRAITS WHICH FORM PART OF THE TERRITORIAL SEA, WE BELIEVE THAT THE REGIME OF PASSAGE THROUGH SUCH STRAITS MUST BE ESTABLISHED IN THE FUTURE CONVENTION IN ACCORDANCE WITH OBJECTIVE CRITERIA, IN ORDER TO FACILITATE AN UNIMPEDED PASSAGE OF SHIPS OF ALL NATIONS THROUGH THOSE WATERWAYS. AT THE SAME TIME, WE BELIEVE THAT THE LEGITIMATE RIGHTS OF THE COASTAL STATES SHALL BE SAFEGUARDED AS FAR AS THE NATIONAL SECURITY, MARITIME SAFETY AND PREVENTION OF POLLUTION ARE CONCERNED.

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ACTION DLOS-07

INFO OCT-01 ARA-16 ISO-00 CG-00 CIAE-00 DODE-00 PM-07 H-03

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R 201855Z JUL 74

FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 4865

S E C R E T SECTION 2 OF 2 CARACAS 6835

FROM US DEL LOS

MY DELEGATION CONSIDERS THAT THE REGIME OF INNOCENT PASSAGE ADEQUATELY WARRANTS THE INTERESTS OF INTERNATIONAL PEACEFUL NAVIGATION. THIS IS THE REGIME NOWADAYS IN FORCE FOR STRAITS COVERED BY THE TERRITORIAL SEA. AS A MATTER OF ACT, THE APPLICATION OF THIS REGIME HAS NEVER RESULTED IN THE CLOSURE OF THOSE WATERWAYS TO WORLD TRADE NOR IN ANY OBSTACLE FOR THE NAVIGATION THROUGH THEIR WATERS. NEVERTHELESS, IN ORDER TO PROVE THAT STATES BORDERING STRAITS HAVE NOT ONLY ACTED IN GOOD FAITH IN THE PAST, BUT ALSO WISH TO ASSURE THE MOST OBJECTIVE CONDITIONS FOR THE FUTURE, MY DELEGATION WOULD HAVE NO OBJECTION IN INSERTING IN THE FUTURE CONVENTION A PROVISION ESTABLISHING IN AN EXPLICIT WAY THE PRESUMPTION THAT PASSAGE OF FOREIGN MERCHANT SHIPS SHALL BE CONSIDERED INNOCENT. THUS, THE BURDEN OF PROVE WOULD ACT IN FAVOR OF INTERNATIONAL COMMERCIAL NAVIGATION. THIS PROVISION TOGETHER WITH THOSE ON NON-SUSPENSION OF PASSAGE THROUGH STRAIT AND ON NON-DISCRIMINATION TOWARDS FLAGS OR CARGOES, WHATEVER THEIR ORIGIN OR DESTINATION MIGHT BE, ENSURES A REGIME OF UNIMPEDED INNOCENT PASSAGE FOR COMMERCIAL NAVIGATION.

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11. MR. PRESIDENT, THESE PROPOSALS, AS SOME OTHERS INSPIRED BY THE PRINCIPLE OF INNOCENT PASSAGE, CAN SERVE AS THE BASIS FOR OUR NEGOTIATION.

HOWEVER, IT IS NOT SURPRISING THAT SOME STATES CONSIDER THEMSELVES OBLIGED TO REJECT TODAY THE NOTION OF INNOCENT PASSAGE. I AM REFERRING TO THOSE STATES WHICH ENVISAGE THE REVISION OF THE LAW OF THE SEA FROM THE POINT OF VIEW OF THEIR STRATEGIC OBJECTIVES RATHER THAN FROM THE PRINCIPLES OF PEACEFUL COOPERATION, DEVELOPMENT AND SECURITY FOR ALL STATES.

FOR THESE COUNTRIES, THE REGIME OF INNOCENT PASSAGE PREVENT THEM FROM ACHIEVING THEIR MILITARY GOALS. THESE ARE BASICALLY THREE: IN THE FIRST PLACE, THE "FREE OVERFLIGHT THROUGH STRAITS", SECONDLY, THE "RIGHT OF SUBMERGED FREE TRANSIT" FOR NUCLEAR SUBMARINES CARRYING NUCLEAR WEAPONS; FINALLY, THE ELIMINATION OF ANY REQUISITE OF PRIOR NOTIFICATION OR AUTHORIZATION FOR

THE PASSAGE OF WARSHIPS, IN PARTICULAR, OF THOSE
CARRYING THE AIRCRAFT WHICH WOULD EXERCISE THE "FREE OVERFLIGHT."

THIS IS ESSENTIALLY THE REAL AIM OF THE "RIGHT OF FREE
TRANSIT AND OVERFLIGHT": TO ALLOW THE MAXIMUM DISPLAY OF NAVAL
AND AIR POWER IN MARITIME AREAS UNDER THE SOVEREIGNTY OF OTHER
STATES. ITS SPONSORS, CERTAINLY, HAVE NOT SPOKEN ABOUT THESE
ASPECTS BUT OF SOMETHING RATHER DIFFERENT, THE INCREASE OF
COMMERCIAL
TRAFFIC, THE NEEDS OF DEVELOPING COUNTRIES TO PROMOTE THEIR MERCHANT
FLEETS AND EVEN, THE EVENTUAL INCREASE IN FREIGHT RATES. BUT, AS
I HAVE ALREADY SAID, THE REAL OBJECTIVE IS QUITE DIFFERENT.

MR. PRESIDENT, TO FOCUS THE REVISION OF THE LAW OF THE SEA
WITH ABSOLUTE PREDOMINANCE OF STRATEGIC INTERESTS IS NOT THE BEST
WAY TO SUCCEED IN OUR WORK. THE EXPERIENCE OF PREVIOUS CONFERENCES
OF CODIFICATION IS VERY ILLUSTRATIVE: THE WISH TO ESTABLISH A
NARROW TERRITORIAL SEA LED TO THE FAILURE OF THOSE CONFERENCES
AND, CONSEQUENTLY, TO THE SACRIFICE OF THE ECONOMIC INTERESTS OF
DEVELOPING COUNTRIES.

TODAY THE DEVELOPING COUNTRIES REJECT THE DOMINATION OF
THE MOST POWERFUL IN THE QUESTION OF EXPLOITATION OF RESOURCES AND
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CLAIM RIGHTS OVER THE ADJACENT SEAS. IT WOULD GO AGAINST
THE SENSE OF HISTORY AND THE OBJECTIVE DEVELOPMENT OF THE
INTERNATIONAL
COMMUNITY TO SACRIFICE THE NATIONAL SECURITY OF COASTAL STATES TO THE
UNSTABLE BALANCE OF POWER AMONG THE MOST POWERFUL. END QUOTE.

STEVENSON

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